

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL STOKES,

Plaintiff,

-against-

RBSB LLC d/b/a Rock Bar,

Defendant.

NOTICE OF MOTION

Case No.: 1:22-cv-05253-JLR

PLEASE TAKE NOTICE that upon the declaration and exhibit of Kenneth Heisler, sworn to on February 15, 2022, the declaration of Jason Romas, sworn to on February 15, 2022, the accompanying memorandum of law, and all prior pleadings and proceedings, Defendant RBSB LLC d/b/a/ Rock Bar ("Defendant") will move this Court, the Honorable Jennifer L. Rochon, Daniel Patrick Moynihan United States Courthouse at 500 Pearl Street, New York, NY 10007-1312, at a date and time of the Court's choosing, or as soon thereafter as counsel can be heard, for an Order to (1) vacate the defaulted judgment entered against Defendant RBSB LLC d/b/a Rock Bar in the amount of \$36,674.50 entered February 15, 2023, (2) deem the Answer with affirmative defenses of Defendant RBSB LLC d/b/a Rock Bar annexed hereto as served upon the Plaintiff, and (3) grant such other and further relief as this Court deems just and proper.

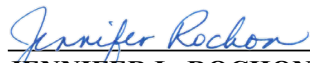
Dated: February 15, 2024

Albany, New York

On consideration of the parties' arguments (ECFS Nos. 32-34), Defendant's motion to vacate the default judgment (ECF No. 28) is GRANTED. The certificate of default (ECF No. 11) is VACATED. The Court finds that (1) Defendant's default was not willful; (2) Defendant has presented a potentially meritorious defense; (3) Plaintiff will not suffer significant prejudice; and (4) there is a strong preference for resolving cases on the merits weighing in favor of vacating the default. *See, e.g., SEC v. McNulty*, 137 F.3d 732, 738-41 (2d Cir. 1993). By **March 12, 2024**, Defendant shall formally file and serve the proposed answer (ECF No. 32-2). The Court shall hold an initial pretrial conference on **April 9, 2024, at 10:30 a.m.** in Courtroom 20B of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York, 10007. By **March 29, 2024**, the parties shall submit: (1) a proposed Civil Case Management Plan and Scheduling Order, using the form available on the Court's website at <https://nysd.uscourts.gov/hon-jennifer-l-rochon>; and (2) a joint letter, not to exceed three single-spaced pages in length, describing the case, any contemplated motions, and the prospect for settlement. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 32.

SO ORDERED.

Dated: March 5, 2024
New York, New York


JENNIFER L. ROCHON
United States District Judge

WHITEMAN OSTERMAN & HANNA LLP

By:


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